UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In re Holocaust Victim Assets Litigation	Master Docket No. CV-96-4849 (ERK)(MDG)
	Consolidated with CV-96-5161 and CV-96-461
This Document Relates to All Actions	

Declaration of Burt Neuborne Concerning the Award of Attorneys' Fees

1. My name is Burt Neuborne. I have served since February 1, 1999, as Court-appointed Lead Settlement Counsel in this proceeding. At the Court's request, I have reviewed the several applications for awards of attorneys fees herein, and make this declaration recommending an award of attorneys fees for work expended by counsel in achieving the $1.25 billion settlement of this action that was agreed to between the parties on August 12, 1998. At the Court's suggestion, I have deferred filing an application authorizing payment of attorneys fees until all legal objections to the settlement have been resolved, and until substantial payments have been made to members of the plaintiff-classes. I am pleased to report that all legal objections to the settlement have either been withdrawn, or have been definitively rejected by the Courts. I am also pleased to report that substantial progress has been made in distributing funds to members of the plaintiff class. Slave Labor I and II funds have been distributed to 75, 000 Holocaust victims, with an additional distribution to 15,000 persons expected within a short time. Thus, by the time the Court considers the fee issue, distributions of approximately $90 million to 90,000 Holocaust slave labor victims will have taken place. In addition a commitment of $100 million to support the poorest surviving Holocaust victims over the next 10 years has been completed, with the first annual contribution of $10 million having been disbursed, and the actual assistance plans fully in

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place. Significant progress has been also been made in identifying and paying the modest number of identifiable persons falling into the refugee class. Finally, after the publication of information concerning 21,000 accounts deemed by the Volcker Report to have a probable relationship with Holocaust victims, and the establishment of a partial data base of 46,000 accounts deemed to have a probable or possible connection with Holocaust victims,[1] substantial progress has been made in returning Deposited Assets to their rightful owners. In the wake of the publication of the 21,000 accounts, 32,000 applications have been filed with CRT II in Zurich. When matched against the partial data base of 46,000 accounts, 12,000 computer matches have been recorded. Intensive investigation of the 12,000 claims is now underway. Two awards of approximately $3 million and $1 million have already been made, with approximately 100 awards either distributed or ready for distribution. At the present time, Deposited Assets awards are averaging over $150,000 per award. Accordingly, at the present rate, distributions will approach, if they do not exceed, the $800 million allocated to the deposited assets class. It is appropriate, therefore, to consider an award of attorneys' fees at this time.

2. At the Court's suggestion, in February, 1997, I assisted in organizing the plaintiffs' Executive Committee, and, with the consent of all parties, agreed to serve as co-counsel for all plaintiffs in prosecuting this litigation. In connection with my efforts to establish an Executive Committee of counsel capable of prosecuting this action with efficiency and excellence, I

[1] I characterize the data base as partial because the Volcker Report urged the creation of a more extensive data base that would have included information on all 4.1 million accounts opened during the Nazi period for which records exist. The Swiss banks insisted upon a much smaller data base consisting of accounts deemed by the Volcker Report to have a probable or possible connection with Holocaust victims. The smaller data base excludes a large number of accounts with Swiss addresses, even though Holocaust victims undoubtedly used Swiss addresses to open accounts. Amendment 2 to the settlement agreement, and the accompanying memorandum to files, sets forth a process to deal with Swiss address accounts, although their inclusion in the data base would have been far more effective.

observed and participated in discussions among counsel, and between counsel and the Court, concerning the role of attorneys' fees in connection with this litigation. Once the Executive Committee was established, I participated fully as a member of the Executive Committee in the formulation and presentation of plaintiffs' legal position, and in the negotiations that culminated in the settlement herein. At the Court's request, I serve as Lead Settlement counsel, and have been intensively involved in the post-settlement efforts to implement the settlement herein. I have personally observed the efforts of counsel throughout these proceedings, and make this declaration concerning attorneys fees on the basis of personal knowledge.

3. This litigation was vigorously prosecuted by able and dedicated counsel, whose efforts helped to bring about a successful resolution resulting in a payment from defendants of $1.25 billion for distribution to the members of the plaintiff-classes. Were this an ordinary class action litigation, under governing law in this Circuit, plaintiffs' counsel would be entitled to a substantial common fund fee award of between 15%-20% of the benefits generated by their efforts. Thus, were this an ordinary litigation, plaintiffs' counsel could expect to receive fee awards of between $200-$300 million.

4. Given the extraordinary subject matter of this litigation, however, which is designed to provide certain Holocaust survivors with a modicum of compensation after 55 years, counsel agreed among themselves (and with the Court) at the outset of this litigation that the ordinary legal rules governing class action compensation should not apply in these proceedings. One group of lawyers - Melvin I. Weiss, Michael Hausfeld, and Burt Neuborne - whose efforts ultimately proved crucial in achieving this settlement, determined that it would be inappropriate to accept fees from members of the plaintiff-class in connection with the efforts needed to bring about the settlement herein, and informed the Court at the outset of this litigation that they were prepared to undertake the case on a pro bono basis. The remaining counsel, recognizing that the ordinary class action fee rules do not apply to cases where highly competent counsel are prepared to undertake the case on a pro bono basis, agreed to waive the prevailing fee rules, and agreed to

accept fees for hours actually worked that advanced the litigation, despite a realization that the resulting fees would be far lower than fees calculated under the ordinary rules.[2]

5. Whatever the ultimate award of fees herein, I believe that the lawyers who prosecuted this litigation have exhibited extraordinary generosity and commitment to the plaintiff-class by foregoing literally hundreds of millions of dollars in fees in an unprecedented effort to demonstrate that no evil, not even the unspeakable abomination of the Holocaust, is completely beyond the boundaries of law. I stress this point because press accounts have mis-reported the reality of counsels' approach to fees. Repeated, inaccurate press reports stressing lawyers feuding over fees have irresponsibly fostered the stereotypical image of greedy lawyers seeking to profiteer at the expense of Holocaust victims. I urge the Court to make it clear that this litigation is an example of counsels' unselfish commitment, not an exercise in greed.

6. The decision to waive prevailing fee rules was made by the plaintiffs' Executive Committee at its first meeting at NYU Law School in February 1997. Several members of the Committee, who had agreed to serve without fee, argued that receipt of fees from the plaintiff-class would be inappropriate in this case. Accordingly, they urged that any lawyer seeking a fee should be excluded from the case. I argued that, while I was in a position to take the case on a pro bono basis because of my academic appointment at NYU, it was unfair to exclude counsel from participating in an extraordinary effort at achieving a modicum of delayed justice solely because their individual financial circumstances made it impossible for them to

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[2]The fee standard adopted by the plaintiffs' Executive Committee at my suggestion at its first meeting is consciously modeled on the standards governing awards in civil rights cases under 42 U.S.C sec. 1988. I understand that certain counsel dispute the accuracy of my recollection of the fee standards adopted by the Executive Committee. I am prepared to testify under oath to my recollection of the Executive Committee's determination. In any event, given the undeniable fact that highly competent lawyers were willing to prosecute the case without fee, it is clear that normal fee rules could not be applied to this case.

waive all fees. Instead, I suggested that counsel who could not afford to waive fees should agree to accept fees for time actually expended that actually advanced the litigation, the fee standard utilized in civil rights cases under 42 U.S.C. sec. 1983. My notes from that meeting indicate that no objection was raised to that formulation. The discussion did not raise the issue of possible multipliers. Multipliers have been awarded in cases such as this for two reasons: to reward genuinely excellent work; and to provide a needed inducement for lawyers to undertake the risky and often unrewarding task of representing plaintiffs in certain class actions. In the unique context of this case, however, where able and dedicated counsel were available to prosecute the action without fee, it would be inappropriate to award a multiplier as a market enhancement, since no such enhancement was necessary. Thus, I believe that if a multiplier is to be awarded in this case, it should be solely to reward genuinely excellent legal work that provided benefit to the plaintiff-class.

7. Applying the fee standard adopted by plaintiffs' Executive Committee, as supplemented by my belief concerning the appropriateness of awarding a multiplier herein, I make the following recommendations concerning the several applications for attorneys' fees filed herein:

(A) Michael Hausfeld - Cohen, Milstein, Hausfeld & Toll, PLLC

Michael Hausfeld served as co-chair of plaintiffs' Executive Committee. His work was instrumental in conceiving the litigation, and advancing it to its final breadth. Mr. Hausfeld devoted very significant resources to factual research, and to the exploration of newly available material in European archives. He conceived imaginative theories linking defendants' behavior to violations of customary international law. Ably assisted by his colleague, Paul Gallagher, Mr. Hausfeld was deeply involved in developing plaintiffs' legal position, and in negotiating the settlement herein. Mr. Hausfeld made a crucial presentation to the Court and to counsel concerning the factual support underlying plaintiffs' position that was, in my opinion, extremely important in achieving the settlement herein. Mr. Hausfeld has declined to seek fees in connection with achieving the settlement. If he had chosen to seek fees at traditional levels, Mr. Hausfeld would have been entitled to a fee award of many millions of dollars. If he had sought fees under the stringent standard adopted by plaintiffs' Executive Committee, he would, in my opinion, have been entitled to a multiplier for excellence.

The disbursements expended by Mr. Hausfeld, his firm, and his associates should be reimbursed in full.

(B) Robert A. Swift - Kohn, Swift & Graf, P.C.

Robert Swift served as co-chair of plaintiffs' Executive Committee. He was involved in every aspect of the litigation. He served as an informal liaison with Deputy Secretary Stuart Eizenstat. Under ordinary class action fee standards, Mr. Swift would have been entitled to seek a multi-million dollar fee. Utilizing the stringent standards applicable to this proceeding, I have reviewed the time charges submitted by Mr. Swift in connection with his fee application. I find the time charges warranted, and well within the range of reasonable staffing. Indeed, they are quite modest. Accordingly, I recommend acceptance of the modest lodestar request of $783, 897.50. I do not believe, however, that the requested multiplier of 2.29% is appropriate. As I have stated, I do not believe that a multiplier is necessary in this case to provide market inducement, since able and dedicated counsel were available to carry on the litigation at no cost to the plaintiff-class. In my opinion, however, a modest excellence multiplier is warranted for Mr. Swift's personal contribution. Accordingly, I recommend a fee award of $1.125 million.

Mr. Swift's request for reimbursement for disbursements of $143,119.10 appears justified. Mr. Swift's request for a special disbursement payment of $1 million attributable to a payment to Christoph Meile should be amplified to assure transparency. While I believe that such a payment to Mr. Meile is justified, and should be forthcoming from the settlement fund, principles of transparency require that such a payment should not be couched as a lawyer's disbursement without further explanation.

Christoph Meile was a security guard at UBS who witnessed the destruction of potentially relevant historical documents by the bank in violation of Swiss law and a commitment made to the Court that no documents of possible relevance to this litigation would be destroyed. When Mr. Meile publicly disclosed what he had witnessed, he was dismissed, subjected to threats of criminal prosecution, and forced to emigrate from Switzerland to the United States.

Subsequent to his emigration to the United States, Mr. Meile commenced a damage action against UBS in the United States, alleging that he had been the subject of unlawful retaliation. During the negotiations that culminated in an agreement in principle to settle this litigation for a payment of $1.25 billion to the settlement class, the defendant banks insisted, as a condition of going forward with the settlement, that Mr. Meile release the banks from any claim for liability. Mr. Meile's counsel, Edward Fagan, offered to execute such a release if the settlement fund agreed to pay Mr. Meile $1million in compensation for the value of his claim against the defendant banks.

Settlement counsel, after considering Mr. Fagan's demand on behalf of Mr. Meile, decided to recommend payment from the settlement fund for two reasons.

First, the payment represents a reasonable effort to estimate the value of the cause of action against the defendant Swiss banks that Mr. Meile released in order to permit the settlement agreement to go forward. Counsel for the defendant banks made it clear that unless Mr. Meile agreed to release the banks from liability for their actions against him, the $1.25 billion settlement could not go forward. The banks' position forced plaintiffs' counsel to request Mr. Meile to withdraw his claims against the defendant banks. Since it appeared that Mr. Meile's claims against the banks were substantial and non-frivolous, it would have been unfair to insist that Mr. Meile release his valuable claims for nothing. During a recess in the settlement negotiations with the banks, Mr. Meile's counsel, Edward Fagan (who was also serving as one of the plaintiffs' counsel), valued Mr. Meile's claims against the banks at $1 million, and insisted upon an agreement to compensate Mr. Meile at that amount. Although the amount was substantial, remaining plaintiffs' counsel recommended acceptance of the payment in order to permit the settlement agreement to go forward. The details were disclosed to Judge Korman, and the commitment was entered into to pay Mr. Meile $1 million in return for his agreement to release his claims against defendant banks. Payment to Mr. Meile was deferred pending final judicial approval of the settlement.

Second, several counsel to the plaintiffs, who would not have agreed to the $1 million payment to Mr. Meile in the abstract, believed that he had rendered substantial service to the plaintiff class by revealing the unlawful destruction of documents by the banks, and that Mr. Meili and his family had suffered greatly as a consequence of his forthright actions. Accordingly, several plaintiffs' counsel acknowledged an obligation to Mr. Meili that, when added to the release of his legal claims, rendered it appropriate for the plaintiff class to pay substantial compensation to Mr. Meili for the release of his claims, and for the losses that he suffered in an effort to tell the truth.

Since the settlement agreement is now final, and since beneficiaries are now receiving substantial payments under the settlement, I believe that it is appropriate to make the promised payment to Mr. Meili. I ask leave, therefore, to carry out the August 12, 1998 agreement between Mr. Meili and the plaintiff class by transferring up to $1 million to Mr. Meili as a special lawyers' disbursement. I propose to transfer $667,000 directly to Mr. Meili immediately, and to ascertain whether some or all of the remaining amount must be transferred to third-persons. No further transfers in connection with Mr. Meili will be made without Court approval.

(C) Melvyn I. Weiss - Milberg, Weiss, Bershad, Hynes & Lerach, PPLC

Melvyn I. Weiss was a founding member of the plaintiffs' Executive Committee, and one of its unquestioned leaders. Mr. Weiss served as Liaison Counsel, and was the plaintiffs' principal negotiator, devoting enormous time, energy, and resources to the prolonged negotiations that finally resulted in the settlement herein. He was instrumental in the formulation of strategy, and in the coordination of counsels' activities with parallel efforts by federal, state, and local government officials to seek a just resolution of this controversy. Mr. Weiss organized the informal governing board of community organizations to which plaintiffs' Executive Committee turned for guidance and advice. He worked closely with representatives of the World Jewish Restitution Organization to assure coordination between counsel and non-governmental organizations representing victims of Nazi oppression. Ably assisted by his colleagues, Joseph Opper and Deborah Sturman, Mr. Weiss was fully involved in the development of plaintiffs' legal position, and was a crucial force in the negotiation of the settlement. Mr. Weiss has declined to seek fees in connection with achieving the settlement. If he had chosen to seek fees at traditional levels, Mr. Weiss would have been entitled to a fee award of many millions of dollars. If he had sought fees under the stringent standard adopted by plaintiffs' Executive Committee, he would, in my opinion, have been entitled to a multiplier for excellence.

Mr. Weiss' request for reimbursement of disbursements in connection with the litigation is warranted, and should be granted.

(D) Burt Neuborne, Esq.

I am the John Norton Pomeroy Professor of Law at New York University School of Law, where I have taught Constitutional Law, Civil Procedure and Federal Courts since 1974. I am also an experienced civil rights lawyer, having served as National Legal Director of the American Civil Liberties Union from 1982-86, and as Legal Director of the Brennan Center for Justice at NYU Law School since 1997. In December, 1996, I was initially requested to advise the legal team headed by Robert Swift on issues associated with class action remedies. When disagreements between and among counsel in overlapping class actions threatened to impede the progress of the litigation, I accepted the Court's invitation to attempt to organize a plaintiffs' Executive Committee that would permit unified and effective prosecution of the litigation. With the cooperation of Mr. Hausfeld, Mr. Weiss, and Mr. Swift, plaintiffs' counsel organized themselves into a 10 person Executive Committee that was vested by the Court with authority to prosecute the consolidated actions. At the request of the Court, and with the consent of all parties, I agreed to serve on the plaintiffs' Executive Committee in a "neutral" capacity, and agreed to serve as co-counsel for all plaintiffs. Once plaintiffs' Executive Committee was formed, virtually all counsel cooperated in developing plaintiffs' legal position, developing factual data crucial to the litigation, and developing a sophisticated and coherent negotiation strategy. Despite the occasional friction that is unavoidable in such a difficult litigation, most members of plaintiffs' Executive Committee worked well together, and provided plaintiffs with extraordinarily able, effective and dedicated legal representation.

I concentrated my efforts on developing the legal theories underlying plaintiffs' case. I prepared amended complaints designed to remove any technical issues from the case. I worked closely with counsel in drafting plaintiffs' legal briefs, and submitted a lengthy declaration summarizing plaintiffs' legal position and refuting the position of defendants' experts. I presented oral argument for the plaintiffs in connection with defendants' Rule 12 motions to dismiss, and participated in the negotiations that culminated in this settlement. At the Courts' request, I agreed to serve as Lead Settlement Counsel, and have been intensively involved on a daily basis in the formulation and implementation of the mechanics designed to carry out the settlement, as well as in the defense of the settlement in the Second Circuit.

I have declined to seek fees in connection with achieving the settlement. I believe that if I choose to seek fees at traditional levels, I would be entitled to a fee award of many millions of dollars. Under the stringent standard adopted by plaintiffs' Executive Committee, I would, in my not-so-modest opinion, be entitled to a multiplier for excellence. I request that I be awarded $50,000 in costs to permit me to reimburse New York University School of Law for the administrative support, including secretarial services, telephone and copying facilities, that it has generously made available to me in connection with this litigation.

(E) Elizabeth Cabraser/Morris Ratner/ Robert Lieff - Lieff, Cabraser, Heimann & Bernstein, LLP

Robert Lieff was a founding member of plaintiffs' Executive Committee. Elizabeth Cabraser and Morris Ratner provided important legal assistance to the prosecution of plaintiffs' case. During the early phases of the litigation, the firm, under the direction of Mr. Lieff and Ms.

Cabraser provided helpful, in depth legal research on a number of issues.

Once the settlement was reached, Morris Ratner undertook the difficult task of formulating and implementing the notice program, and working with the Special Master to develop a plan of allocation and distribution. His work has been invaluable. Lieff Cabreser initially was one of the firms seeking fees herein. After consideration, Lieff Cabreser has asked that its fee award be donated to Columbia Law School to establish a chair in memory of victims of the Holocaust. If the firm had chosen to seek fees at traditional levels, it would have been entitled to a fee award of many millions of dollars, and a multiplier for excellence. Instead, Lieff Cabreser has requested a modest fee award of $1.1 million to be donated to Columbia Law School. I recommend that the application be granted, together with a $400,000 multiplier for excellence that would permit the full endowment of a Holocaust Remembrance chair. I recommend payment of the firm's disbursements.

(F) Irwin Levin/Richard Shevitz - Cohen & Malad

Irwin Levin and Richard Shevitz shared a seat on plaintiffs' Executive Committee. Their firm, Cohen & Malad, provided thoughtful legal research of great assistance during the formulation of plaintiffs' legal position. They each played helpful roles in developing plaintiffs' negotiation strategy, and consistently worked effectively to foster collegial relationships between and among counsel. Given their significant contributions, they would each have been entitled to a fee substantially in excess of one million dollars under ordinary fee calculations. Instead they have sought a modest lodestar award of $384,000. I recommend that their application be granted, together with a modest excellence multiplier that would bring the total award to $1 million. Reimbursement of their claimed disbursements is also justified.

(G) Steven A. Whinston - Berger & Montague, PC

Steven A. Whinston shared a seat on plaintiffs' Executive Committee with Mel Urbach. Both represented the World Council of Orthodox Communities, a communal association of certain Orthodox Jewish congregations. Mr. Whinston participated constructively in the development of plaintiffs' legal position, and was an active participant in the negotiations that culminated in the settlement. Accordingly, he is clearly entitled to a substantial fee. Indeed, under ordinary fee calculation rules, he would be entitled to fees in substantial excess of one million dollars. Viewed on an hourly basis, however, a significant proportion of Berger & Montague's lodestar appears to have been expended in client conferences with its communal client and in communication with members of the plaintiff-class. While reasonable client contacts should qualify for fees, the combined time requests of Mr. Whinston and Mr. Urbach have the result of asking the plaintiff-class to subsidize non-legal activities made necessary by the unique demands of their individual clients. Thus, while I do not question the actual expenditure of time by Berger & Montague, I do not believe that, under the stringent standards applied to this litigation, all of it qualifies as necessary to advance this litigation. In the absence of more specific allocation of time, I recommend a lodestar fee award of $1.1 million to Mr. Whinston. I recommend reimbursement of the firm's disbursements.

(H) Edward D. Fagan - Fagan & D'Avino, LLP

Edward Fagan was a founding member of plaintiffs' Executive Committee, and one of the first lawyers to seek redress against defendants on behalf of Holocaust survivors. Given Mr. Fagan's role in helping to launch this litigation, he is entitled to a fee award. I wish it were possible for me to support his application for a substantial award of attorneys fees in excess of $1.5 million. Unfortunately, Mr. Fagan provided limited legal assistance to plaintiffs. His original complaint was seriously defective, and, in my opinion, would not have withstood a motion to dismiss. Under the stringent fee criteria adopted by plaintiffs' Executive Committee, counsel may seek fees only for time actually expended that advanced the interests of the plaintiffs. Mr. Fagan's fee application, which fails to describe the nature of his activities, makes it extremely difficult, if not impossible, to determine the nature of the work performed. Given the ambiguity of his time records, and my first-hand knowledge of his legal contribution, I do not believe that his time qualifies for legal fees in the amount requested. While it is often important to explain legal issues to the general public, public education activity cannot justify a fee award in the amounts sought by Mr. Fagan. Accordingly, I recommend an award to Mr. Fagan of $350,000. I recommend payment of Mr. Fagan's documented disbursements that are shown to have been incurred in connection with legal activity associated with this case.

(I) Mel Urbach, Esq.

Mel Urbach shared a seat on plaintiffs' Executive Committee with Steven Whinston. He represented the World Council of Orthodox Communities. Mr Urbach played a constructive role in articulating the moral basis of plaintiffs' claims, but played almost no role in developing plaintiffs' legal or factual position. He played a secondary role in the negotiations that led to this settlement. A significant portion of Mr. Urbach's lodestar appears to involve communications with his communal client, and non-legal interactions with certain class members. While this case required significant expenditure of resources to assure that members of the plaintiff-class understood the litigation, an award of almost one million dollars in legal fees for such activity seems excessive, especially since Berger & Montague has sought significant fees for similar activity. I believe that an award of $450,000 to Mr. Urbach is appropriate. I recommend payment of his documented disbursements.

(J) Michael Witti

Michael Witti is an attorney practicing in Germany who has expended substantial efforts on behalf of Holocaust victims. He played a secondary role, however, in the legal, factual and negotiating aspects of the Swiss bank litigation. Given the generous treatment of Mr. Witti by the arbitrators in connection with the award of fees associated with the establishment of the German Foundation, I do not believe that an award of additional fees from the Swiss settlement fund is appropriate. Documented disbursements should be reimbursed, if they have not already been reimbursed by the German Foundation.

(K) Samuel Dubbins, Esq.

Samuel Dubbins, who represented several objectors to the settlement agreement, has expressed an intention to apply for an award of legal fees based on a claim that his efforts in opposing the settlement have assisted the plaintiff class. Consideration of the fee issue has been delayed to permit him to complete an application. Despite repeated postponements, no application has yet been filed on behalf of Mr. Dubbins.

8. Accordingly, because of the extraordinary generosity of counsel, I am able to recommend a total award of $5.625,00 in attorneys fees attributable to the successful resolution of this litigation resulting in the establishment of a settlement fund of $1.25 billion. Such an award would total less than one-half of one percent (.05%) of the settlement fund. Of the award, $1.5 million in fees is being donated to Columbia Law School in remembrance of Holocaust victims, and $4.125 million is payable to counsel. I am confident in asserting that this is the lowest fee structure ever adopted in a case of comparable complexity and success.

Dated: February 22, 2002
New York, New York

Burt Neuborne

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D+R

New York University
A private university in the public service

School of Law

40 Washington Square South, Room 307
New York, NY 10012-1099
Telephone: (212) 998-6172
FAX: (212) 995-4341

E-mail: neuborne@juris.law.nyu.edu

Burt Neuborne
John Norton Pomeroy Professor of Law
Legal Director, Brennan Center for Justice

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July 9, 2002

Mr. Leo Rechter
President, NAHOS, Inc.
P.O. Box 670125
Station C, Main Street
Flushing, New York 11367

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Dear Mr. Rechter:

Judge Korman has forwarded your letter dated July 1, 2002 to me, and has asked me to reply because it is more appropriate for counsel to respond to your concerns. I serve as lead settlement counsel in the Swiss Bank case, having been appointed by Judge Korman on February 1, 1999. Before that, as you may know, I served without fee as one of the principal lawyers in the case.

I begin by expressing my appreciation for your many years of work on behalf of Holocaust survivors. Those of us who have come late to the task are awed by the remarkable spirit of the generation of Holocaust survivors you represent. In that spirit, I hope to explain the distribution of the settlement funds, and to seek your support and understanding.

The first, and most prevalent, misconception about the Swiss Bank settlement is that it is not a charitable fund for the benefit of Holocaust survivors generally. Rather, as I noted at the November 20, 2000 hearing on the Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, the fund is the result of the settlement of a lawsuit involving precisely defined legal claims against Swiss banks. In working out a plan of allocation and distribution, Judge Korman, Special Master Gribetz and I are under a legal duty to attempt to distribute the funds to persons who have valid legal claims against the

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Swiss bank defendants. We have attempted to cast that net widely in order to benefit as many persons as possible, but the process is not without limits.

In defining eligible beneficiaries, the Settlement Agreement identified five categories of victims: (1) holders of Swiss bank accounts; (2) two categories of slave laborers whose agony was made possible by Swiss financing or complicity; (3) refugees who were expelled from or denied entrance into Switzerland, or who were admitted into Switzerland but mistreated; and (4) persons whose assets were looted and transacted through Swiss banks. We are under a legal duty to make every effort to distribute the Settlement Funds to persons who fall into those categories before expending settlement funds for the general relief of poor Holocaust survivors.

Thus far, we have identified approximately 95,000 surviving Jewish slave laborers, each of whom has received payment from the Swiss settlement fund. Approximately 10,000 additional Jewish slave laborers are expected to receive payment from the Swiss fund within the next two weeks. Our data indicates that another 70,000 to 80,000 Jewish slave laborers, and as many as 40,000 non-Jewish surviving slave laborers, may qualify for slave labor payments from the Swiss fund. Eventually, we anticipate that approximately 200,000 slave laborers will receive payments from the Swiss settlement fund.

In addition, approximately 3,000 to 4,000 refugees have been identified who may qualify for payments for having been expelled from or denied entry into Switzerland, or admitted but mistreated while in Switzerland.

Special Master Gribetz correctly determined that it was impossible to distribute funds to the Looted Assets Class on an individual basis because it was impossible to determine whose assets were transacted through Swiss banks and other Swiss entities, and whose assets were disposed of directly by the Nazis through German and other sources. Moreover, given the scale of the looting, it was impossible to determine on an individual basis the value of the assets that had been stolen from virtually every Jew in Europe, as well as from the non-Jewish victims or targets of Nazi persecution who also comprise the "Looted Assets Class." Accordingly, Special Master Gribetz recommended, and Judge Korman agreed, that funds on behalf of the Looted Assets Class should be distributed by what is called *cy pres* (Norman French for "as close as possible"). The Looted Assets funds were to be used to aid the neediest Holocaust survivors. As you are aware, $100 million has been allocated for that purpose, and has been committed to groups working directly with the poorest survivors to provide them with food, medicine and shelter.

Finally, Judge Korman, Special Master Gribetz and I all agreed that the strongest claim, legally and historically, was the demand by Holocaust victims for the return of Swiss bank accounts. Given the strength of this claim, we were under a legal duty to set aside adequate funds to assure the payment of qualifying bank account claims. Following the advice of Paul Volcker, Special Master Gribetz allocated up to $800 million to the repayment of bank account owners or their heirs. As you probably are aware, that determination has been upheld by the United States Court of Appeals for the Second Circuit, which, on July 26, 2001, held that the "existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting. In addition, these claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate. Any allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims."

Unfortunately, as you know, the Swiss banks have destroyed a substantial number of the relevant records, leaving us with the difficult task of determining the validity of 32,000 claims for Swiss accounts. We have established an institution in Zurich, the Claims Resolution Tribunal, operating under Court supervision, to make the necessary determination. Thus far, approximately 170 claims, averaging more than $100,000 per account, have been validated. In an effort to speed up the process, significant changes to the CRT process and personnel are underway. I anticipate that during the next six months, significant progress in processing bank account claims will have been made. At that point, it will be possible for us to make accurate predictions concerning the full amount to be distributed to bank account claimants. I continue to believe that, given the destruction of many of the relevant bank records, a significant sum may be available for a secondary distribution to other class members, and for the benefit of Holocaust victims generally. Until that time, however, I cannot recommend that funds that may belong to specific Holocaust victims be shifted to general relief projects, no matter how worthy they may appear.

I hope that you understand, therefore, that the Swiss settlement fund cannot be converted into a general relief fund. Even if we wanted to shift funds from one category of Holocaust victim to another in a search for moral justice or a response to pragmatic need, we would be violating our legal duties to attempt such moral triage. None of us doubt that there are people in need, and that many praiseworthy uses can be found for the Swiss settlement funds. If, as I believe, it proves impossible to find the owners of a significant number of Swiss bank accounts, a secondary distribution process can take place during which morality and pragmatic need will play a significant role.

Finally, I feel it necessary to comment briefly on Mr. Dubbin's suggestion that Swiss settlement funds be distributed to permit health care or other needed social services to be delivered to residents of South Florida, or other particular locations. One important principle that cannot and will not be compromised by the Swiss settlement fund is a promise of equal treatment for all Holocaust survivors. We simply cannot aid Holocaust victims in one part of the country, while ignoring similarly situated victims elsewhere. I should also comment on the suggestion that home health care or other health benefits be provided to Holocaust survivors through the Swiss settlement. As you know, I strongly support such a plan if it is financially and administratively feasible, and if it is equally available to Holocaust survivors generally. You should know that despite my repeated requests, I have never received a serious proposal for health care delivery. In fact, no effort at developing a serious plan appears to have taken place. Rather, Mr. Dubbin appears to have settled on a strategy of advocating such a plan in the abstract without seeking to make it work. It is classic political showmanship with no substance whatever. You, of all people, should not be taken in by such demagogic grandstanding.

Indeed, the only document of substance that I have ever received from Mr. Dubbin is an elaborate attorneys fee request for approximately six million dollars on behalf of Mr. Dubbin and his client, Dr. Thomas Weiss. I will oppose Mr. Dubbin's request for fees payable from the survivors' money because, in my opinion, neither he nor Dr. Weiss have provided any benefit to the Swiss settlement class. In fact, their behavior delayed the payment process by at least six months. The final decision on fees is, of course, up to Judge Korman.

Mr. Dubbin's and Dr. Weiss's demand for a six million dollar attorneys fee payable from the survivors' money is greater than the total of all attorneys fees likely to be awarded to those lawyers whose work actually created the Swiss settlement fund. The three principal lawyers who litigated the Swiss bank case and led the negotiations, Melvyn Weiss, Michael Hausfeld, and myself, have declined to seek attorneys fees for having obtained the $1.25 billion settlement. Several other lawyers who worked on the case have requested an award of fees. I have recommended awards totaling less than $5 million, much of which is pledged to Holocaust-related charity. Given that background, I find it difficult to contain my contempt for Mr. Dubbin's and Dr. Weiss's efforts to raid the settlement fund for their own benefit.

I would, of course, be pleased to respond to any questions or comments you may have.

Sincerely yours,

Burt Neuborne

cc: Judge Edward R. Korman
Special Master Judah Gribetz
Sam Dubbin, Esq.

New York University
A private university in the public service

School of Law

40 Washington Square South, Room 307
New York, NY 10012-1099
Telephone: (212) 998-6172
FAX: (212) 995-4341

E-mail: neuborne@juris.law.nyu.edu

Burt Neuborne
John Norton Pomeroy Professor of Law
Legal Director, Brennan Center for Justice

July 10, 2002

Alex Moskovic
President
Child Survivors/ Hidden Children of the Holocaust Inc.
7529 SE Bay Cedar Circle
Hobe Sound, Florida 33455

Dear Mr. Moskvic:

Judge Korman has forwarded your letter dated July 1, 2002 to me, and has asked me to reply because it is more appropriate for counsel to respond to your concerns. I serve as lead settlement counsel in the Swiss Bank case, having been appointed by Judge Korman on February 1, 1999. Before that, as you may know, I served without fee as one of the principal lawyers in the case.

The first, and most prevalent, misconception about the Swiss Bank settlement is that it is not a charitable fund for the benefit of Holocaust survivors generally. Rather, as I noted at the November 20, 2000 hearing on the Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, the fund is the result of the settlement of a lawsuit involving precisely defined legal claims against Swiss banks. In working out a plan of allocation and distribution, Judge Korman, Special Master Gribetz and I are under a legal duty to attempt to distribute the funds to persons who have valid legal claims against the Swiss bank defendants. We have attempted to cast that net widely in order to benefit as many persons as possible, but the process is not without limits.

In defining eligible beneficiaries, the Settlement Agreement identified five categories of victims: (1) holders of Swiss bank accounts; (2) two categories of slave laborers whose agony was made possible by Swiss financing or complicity; (3) refugees who were expelled

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from or denied entrance into Switzerland, or who were admitted into Switzerland but mistreated; and (4) persons whose assets were looted and transacted through Swiss banks. We are under a legal duty to make every effort to distribute the Settlement Funds to persons who fall into those categories before expending settlement funds for the general relief of poor Holocaust survivors.

Thus far, we have identified approximately 95,000 surviving Jewish slave laborers, each of whom has received payment from the Swiss settlement fund. Approximately 10,000 additional Jewish slave laborers are expected to receive payment from the Swiss fund within the next two weeks. Our data indicates that another 70,000 to 80,000 Jewish slave laborers, and as many as 40,000 non-Jewish surviving slave laborers, may qualify for slave labor payments from the Swiss fund. Eventually, we anticipate that approximately 200,000 slave laborers will receive payments from the Swiss settlement fund.

In addition, approximately 3,000 to 4,000 refugees have been identified who may qualify for payments for having been expelled from or denied entry into Switzerland, or admitted but mistreated while in Switzerland.

Special Master Gribetz correctly determined that it was impossible to distribute funds to the Looted Assets Class on an individual basis because it was impossible to determine whose assets were transacted through Swiss banks and other Swiss entities, and whose assets were disposed of directly by the Nazis through German and other sources. Moreover, given the scale of the looting, it was impossible to determine on an individual basis the value of the assets that had been stolen from virtually every Jew in Europe, as well as from the non-Jewish victims or targets of Nazi persecution who also comprise the "Looted Assets Class." Accordingly, Special Master Gribetz recommended, and Judge Korman agreed, that funds on behalf of the Looted Assets Class should be distributed by what is called *cy pres* (Norman French for "as close as possible"). The Looted Assets funds were to be used to aid the neediest Holocaust survivors. As you are aware, $100 million has been allocated for that purpose, and has been committed to groups working directly with the poorest survivors to provide them with food, medicine and shelter.

Finally, Judge Korman, Special Master Gribetz and I all agreed that the strongest claim, legally and historically, was the demand by Holocaust victims for the return of Swiss bank accounts. Given the strength of this claim, we were under a legal duty to set aside adequate funds to assure the payment of qualifying bank account claims. Following the advice of Paul Volcker, Special Master Gribetz allocated up to $800 million to the repayment of bank account owners or their heirs. As you probably are aware, that determination has been upheld by the United States Court of Appeals for the Second Circuit, which, on July 26, 2001, held that the "existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting. In addition, these claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate. Any allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims."

Unfortunately, as you know, the Swiss banks have destroyed a substantial number of the relevant records, leaving us with the difficult task of determining the validity of 32,000 claims for Swiss accounts. We have established an institution in Zurich, the Claims Resolution Tribunal, operating under Court supervision, to make the necessary determination. Thus far, approximately 170 claims, averaging more than $100,000 per account, have been validated. In an effort to speed up the process, significant changes to the CRT process and personnel are underway. I anticipate that during the next six months, significant progress in processing bank account claims will have been made. At that point, it will be possible for us to make accurate predictions concerning the full amount to be distributed to bank account claimants. I continue to believe that, given the destruction of many of the relevant bank records, a significant sum may be available for a secondary distribution to other class members, and for the benefit of Holocaust victims generally. Until that time, however, I cannot recommend that funds that may belong to specific Holocaust victims be shifted to general relief projects, no matter how worthy they may appear.

I hope that you understand, therefore, that the Swiss settlement fund cannot be converted into a general relief fund. Even if we wanted to shift funds from one category of Holocaust victim to another in a search for moral justice or a response to pragmatic need, we would be violating our legal duties to attempt such moral triage. None of us doubt that there are people in need, and that many praiseworthy uses can be found for the Swiss settlement funds. If, as I believe, it proves impossible to find the owners of a significant number of Swiss bank accounts, a secondary distribution process can take place during which morality and pragmatic need will play a significant role.

Finally, I feel it necessary to comment briefly on Mr. Dubbin's suggestion that Swiss settlement funds be distributed to permit health care or other needed social services to be delivered to residents of South Florida, or other particular locations. One important principle that cannot and will not be compromised by the Swiss settlement fund is a promise of equal treatment for all Holocaust survivors. We simply cannot aid Holocaust victims in one part of the country, while ignoring similarly situated victims elsewhere. I should also comment on the suggestion that home health care or other health benefits be provided to Holocaust survivors through the Swiss settlement. As you may know, I strongly support such a plan if it is financially and administratively feasible, and if it is equally available to Holocaust survivors generally. You should know that despite my repeated requests, I have never received a serious proposal for health care delivery.

Indeed, the only document of substance that I have ever received from Mr. Dubbin is an elaborate attorneys fee request for approximately six million dollars on behalf of Mr. Dubbin and his client, Dr. Thomas Weiss. I will oppose Mr. Dubbin's request for fees payable from the survivors' money because, in my opinion, neither he nor Dr. Weiss have provided any benefit to the Swiss settlement class.

I would, of course, be pleased to respond to any questions or comments you may have.

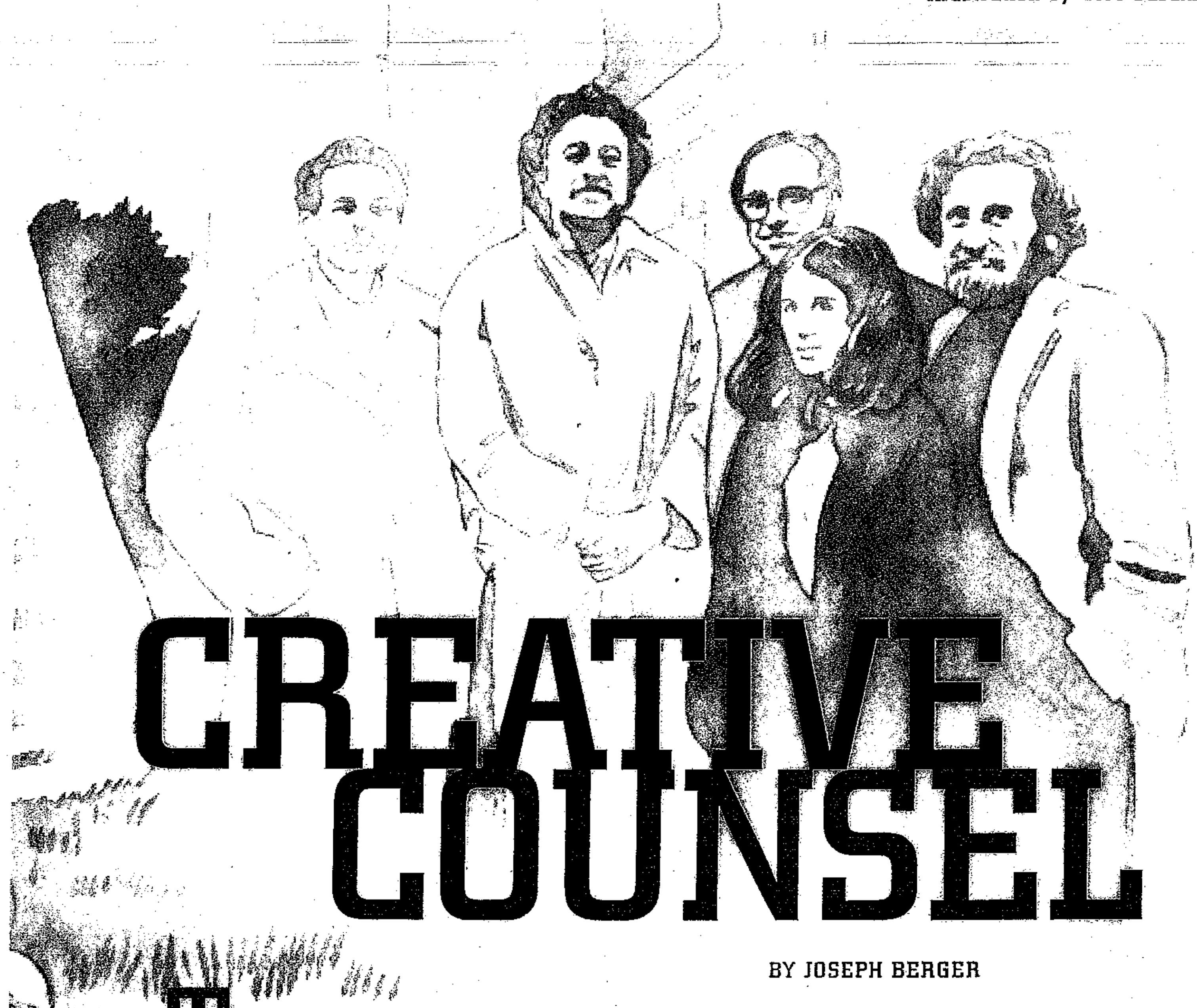
Sincerely yours,

Burt Neuborne

cc: Judge Edward R. Korman
Special Master Judah Gribetz
Sam Dubbin, Esq. ✓

Burt Neuborne
is a litigating academic,
a pragmatic liberal,
and an inquisitive teacher.
He sees himself, simply,
as an imaginative lawyer.

Illustration by Goro Sasaki



CREATIVE COUNSEL

BY JOSEPH BERGER

To understand how Burt Neuborne has managed to win so many watershed constitutional cases and harvest billions of dollars for families of Holocaust survivors around the world, all while being a faculty star at the New York University School of Law, it helps to reach back to his days as a gangly youngster on the postwar streets of Jamaica, Queens. As dusk would fall, young Burt would be out playing stickball with the rest of the neighborhood kids and the receding light would make the spaldeen (as the pink Spalding rubber ball was known) hard to pick out. His less relentless buddies were ready to call it a day. Not Neuborne.

"When it would get dark and I was losing, I would always say, 'We can play another inning,' " he remembers.

Now fast-forward to the Vietnam War era to roughly 1970, when Neuborne, a lawyer for the New York Civil Liberties Union, was defending an artist who had been arrested for sewing a 7 1/2 foot-long American flag into the shape of a penis, stuffing it, and displaying it near the window of a Madison Avenue gallery. A three-judge criminal court panel convicted the artist of desecrating the flag and a seven-judge New York State Court of Appeals affirmed that ruling. But displaying his legendary doggedness, Neuborne twice took the case all the way to the United States Supreme Court and eventually got a lower court federal judge—the 37th judge to rule on the matter—to declare the flag-desecration statute in violation of the First Amendment's right of free speech. Exhausted prosecutors called it a day, and Neuborne had won the game in extra innings.

> "I'm an unreconstructed ham," he said. "That's why I love being in court, that's why I love teaching. I love the performance, the standing up in front of a group and performing for them. I also love the intellectual challenge of it."

It's 1973, and this time, in a more momentous case, Neuborne displayed even more fevered persistence. Now assistant legal director at the American Civil Liberties Union, he was defending American bomber pilots in Thailand who were facing courts-martial for refusing to carpet-bomb Cambodia. To Neuborne's astonishment, Federal Judge Orrin Judd of the Eastern District in New York upheld his argument—that the pilots could not be punished since Congress had not authorized the war. But the Second Circuit Court of Appeals stayed Judd's ruling, allowing the bombing to continue. It was summer, so Neuborne could not appeal to the full Supreme Court, and the circuit justice, Thurgood Marshall, despite his anguished personal misgivings, declined to step in. But Neuborne knew that there was at least one more inning he could play.

The ACLU had a "Douglas watch" to keep tabs on the whereabouts of the Court's most liberal jurist, Justice William O. Douglas, whenever capital punishment and other irreparable-harm cases required emergency stays. Neuborne flew to Washington State, where Douglas was vacationing, and, in a scene evocative of Henry IV's humbling call at Canossa in 1077, he knocked one morning on the door of Douglas's rustic cabin in Goose Prairie. Douglas, unfazed, agreed to hear oral arguments in the Yakima post office.

Douglas, as Neuborne recalls it, was frail and tired at the end of his career. "People sort of knew this was his last hurrah." The canny Douglas found a sly way of warning Neuborne not to be too hopeful, that even his blessing could be futile. "Mr. Neuborne," the judge asked, "what happened when I was asked to intercede 20 years ago?"

Neuborne remembered that Julius and Ethel Rosenberg had been executed in 1953, for spying, a step taken after the full Supreme Court overruled a Douglas stay. But Douglas's pessimism didn't dissuade Neuborne. He anticipated that this time there would not be enough justices lingering in the steamy capital to overrule Douglas.

Douglas indeed ruled in his favor. But the next day the Supreme Court held a conference call to reinstitute the stay. Yet it never heard the case on its merits. The Nixon administration, figuring that a Supreme Court hearing might jeopardize its Cambodia policy, simply arranged to have all the pilots honorably discharged. From Neuborne's point of view, playing after the sun went down paid off once more.

"I verge on the obsessive," Neuborne said, recalling this episode. "My wife has a wonderful quote from Santayana that she adapted: 'My husband is a man who redoubles his efforts once he loses sight of his goals.' "

For a man who supposedly loses sight of his goals, Neuborne, 63 years old, has managed to carve out a life that has been elegantly coherent—of pioneering litigation, teaching, and scholarship that has revolved around a few signature themes like the First Amendment and civil rights. He has argued cases six times before the Supreme Court and briefed some 200 others. His imprint on civil-liberties laws and his ability to analyze the pertinent issues has made him the go-to guy over the years for dozens of journalists and scholars seeking insights on those laws. He shows no signs of slowing down, either. During the last year or so, Neuborne was a key player in two of the seminal cases of our time.

He helped defend the groundbreaking McCain-Feingold campaign-finance reforms, advising the bill's sponsors throughout the process—even helping to craft the legislation. Neuborne also has been deeply immersed in two major Holocaust cases. He is plaintiffs' counsel in a lawsuit against Swiss banks over their handling of Nazi-era bank accounts and was the principal lawyer in a series of Holocaust suits involving compensation for slave laborers of wartime German industry.

Yet, for the past three decades, the chief institutional anchor of his life has been not an opulent law office but a podium at the New York University School of Law, where he started teaching in 1972 as an adjunct and now has the title of John Norton Pomeroy Professor of Law. There he also serves as the legal director of the Brennan Center for Justice, which was started in 1995 by Supreme Court Justice William J. Brennan's family with a broad mission of trying to clear the hurdles to a more democratic society. The center's most notable Supreme Court victories have been its successful defense of the McCain-Feingold campaign-finance reform bill, where Neuborne wrote the brief, and *Velazquez v. Legal Services Corp.*, where Neuborne briefed and argued a landmark First Amendment challenge to the government's effort to muzzle lawyers for the poor. While juggling these enormously important cases, Neuborne has consistently prepared and inspired NYU School of Law students with his lively Evidence and Procedure lectures.

"Burt has tremendous energy," said Judge Edward R. Korman of Federal Court in Brooklyn, who decided how to distribute the money in the settlement of the Swiss banks case. "While everything's going on he sends me law review articles he's written, he's speaking in various places, he's filing papers in this lawsuit, and in the German lawsuit. I asked him a couple of weeks ago if he was on steroids. He's absolutely brilliant."

Neuborne has the balding, bespectacled look of a stereotypical scholar, but his face is leavened by the kind of chipmunk cheeks that a mother loves to pinch and the springing steps of a long-distance runner who has completed two marathons (New York and Paris) and still jogs five miles a day on the treadmill. His speech has a slight New York inflection and his voice something of a Mel Brooks rasp, yet he has an impressive Professor Higgins-like gift for well-parsed sentences. Any formality, though, is lightened by a ready smile and a puckish sense of humor.

All of these attributes are evidently arrows in his instructional quiver, qualities that in 1990 won him the University's Distinguished Teacher award—almost never given to teachers who confront large lecture classes of 100 or more, as he usually does. "I'm an unreconstructed ham," he said. "That's why I love being in court, that's why I love teaching. I love the performance, the standing up in front of a group and performing for them. But I also love the intellectual challenge of it. There's something splendid about seeing the material each year through the eyes of an idealistic and smart student who asks hard questions about it."

It may seem paradoxical, but as a professor Neuborne has generally avoided the topics that have earned him his legal stripes. He spurns courses on the First Amendment or affirmative action or women's rights, topics that as he puts it are "close to my politics." Rather, he teaches workhorse courses in Evidence.

"If I were to teach affirmative action I'd have to be careful not to teach it as a cheerleader," he explains. "If you're going to be a teacher and not a cheerleader you have to force students to confront, to realize there are reasonable arguments that can go the other way and force students to develop those arguments. And I can do it. But it's not something I try to do."

Indeed, when he does teach a rare constitutional law class he will often take a contrarian position by, say, advocating censorship. "I force them to argue me off of the position they know I don't agree with," he said. "The purpose of the classroom is to exercise their minds, not to find out what I think." He has learned, he said, that "the students have absolutely no fear of me and chase me around the classroom."

A visit to a run-of-the-mill Evidence class in March, when students were just back from their spring break, makes palpable Neuborne's zest as a teacher. Neuborne clips a small microphone to his gray V-necked sweater and spends the first 15 minutes of the two-hour class reacquainting students with the differences between statements made assertively and those made more obliquely or through behavior (an opened umbrella declares it's raining, for example). At trial, it's the nonassertive statements that can avoid being classified as hearsay. As he talks, Neuborne's voice rises to a singsong. The students seem riveted.

"He's the best," said Lauren Smith ('04), who shopped around for teachers by auditing classes. "He's very clear and he has a kindness and a sense of humor that comes through in every lecture. He does a good job of mixing the practical and the theoretical, which not all professors do."

When you ask Neuborne what he likes about teaching, he quotes John Sexton, who was dean of the Law School between 1988 and 2002 before becoming University president. "Sexton used to say when you became a teacher you were blessed because you entered into cyclical time instead of linear time. Everything starts fresh all the time. Each new year is a new beginning. This is at least the twentieth time I've taught Evidence and the novelty is still there. I learn something new every year."

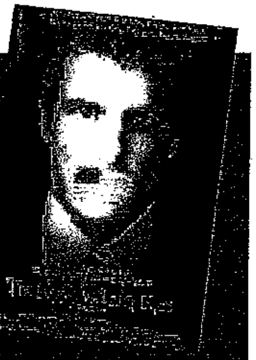
Neuborne tells of modeling himself on Ruth Bader Ginsburg, who was head of the women's rights project at the ACLU at the same time she was a professor at Columbia Law School, arguing six cases before the Supreme Court that changed the way the law treats gender. "I watched how a superb academic could also be a remarkably effective litigator and actually change things," he said. His teaching, he said, is always enhanced by his work as a lawyer. "I'm a good, strong teacher, but I don't think I could be anything like the force I can be in the classroom if I were teaching just abstractions or my reading of what other people did. The fact that I actually do this stuff is what gives me confidence."

Three or four times a year Neuborne moderates a panel of lawyers and other experts in a role-playing exercise on a controversial issue. In February he ran an Anti-Defamation League-sponsored panel at the Law School on how to handle anti-Semitism on campus. The panel included Tom Gerety, a former president of Amherst who is now the executive director of the Brennan Center, and S. Andrew Schaffer, general counsel of New York University. Neuborne had the panelists pretend they were students, deans, college presidents, journalists, lawyers, and judges handling a mock case where a campus newspaper prints a cartoon of Israeli Prime Minister Ariel Sharon in an SS uniform with a caption: "Stop Israeli Nazi Apartheid."

The mock case raised questions about the parameters of free speech, and as he prowled the stage, Neuborne ratcheted the issue up, probing whether hateful speech can be so extreme that it can incite readers or listeners to violence, discussing differences in speech made on public or private college campuses, asking whether it matters if the offensive newspaper is distributed publicly or on the doorsteps of Jewish students, and considering whether it matters if the president is Jewish or not.

Neuborne certainly doesn't shrink from controversy. The class-action lawsuit against Swiss banks, aside from being astonishingly complicated—some legal papers had to be translated into 16 languages, for example—has also rankled some interested parties. The suit settled for $1.25 billion, almost $700 million of which already has been distributed to descendants of bank account holders, inmates of slave-labor camps financed by Swiss banks, refugees who were turned away from Switzerland, and people whose assets were "looted by the Nazis and fenced through" Swiss banks. A few American survivors or spokesmen like lawyers Thane Rosenbaum and Samuel J. Dubbin have assailed the settlement for giving the bulk of the looted-assets money to survivors in the former Soviet Union and leaving only a small percentage for U.S. survivors. In an interview, Neuborne (who took on this case pro bono) contended

NEUBORNE GOES HOLLYWOOD



Despite his numerous careers, the unstoppable Burt Neuborne has managed to find time for one more—Hollywood actor.

He appeared on screen for 10 minutes in Milos Forman's 1996 movie *The People vs. Larry Flynt*, playing Norman Roy Grutman, a New York lawyer representing televangelist Jerry Falwell in his lawsuit against the publisher of the skin magazine *Hustler*. The Academy Award-winning Czech-born film director recruited Neuborne after seeing his work as a Court TV commentator on the O.J. Simpson trial. Neuborne accepted, thinking it would highlight the importance of free speech to a mass audience.

The irony in his casting was that Neuborne, as national legal director for the American Civil Liberties Union, had actually filed an amicus brief to the Supreme Court defending Flynt, not Falwell. Falwell contended that he had been the victim of "intentional infliction of emotional distress" because a *Hustler* parody suggested that he had sex with his mother. Neuborne argued that the *Hustler* article fell within the bounds of legitimate parody of a public figure protected by the watershed *New York Times v. Sullivan* case. While a lower court sided with Falwell, the Supreme Court upheld Flynt's First Amendment rights.

But Neuborne the lawyer's political leanings did not stop Neuborne the actor from being terrier-like in his defense of Falwell. Indeed, he recalls that the script had a courtroom cross-examination that fell flat and Forman allowed him and actor Woody Harrelson to ad lib their exchanges in a more aggressive fashion.

"I was behaving the way I behave in court, pressing Harrelson the way I'd press a reluctant witness," Neuborne said.

At one point, Neuborne complained to Forman that the legal arguments his character was making were rather flimsy, giving the philosophical debate within the movie an imbalance. Forman's tart response was: "You've gotten so Hollywood. All you want is more lines for your character."

"The People vs. Larry Flint" © 1996 Columbia Pictures Industries, Inc. All Rights Reserved. Courtesy of Columbia Pictures.

Clockwise from top left: Neuborne with Melvyn Weiss ('59) and soon-to-be Senator Hillary Clinton; his wife Helen Redleaf Neuborne; teaching at NYU School of Law; inset: as a baby; father, Sam, with Navy frogman unit in WWII; as prosecutor of George III during a mock trial at an ABA meeting in London in 2000; daughter Ellen with her husband, David Landis, and their children, Henry and Leslie, in 2002; late daughter Lauren in front of Sage Chapel at Cornell University where she delivered a sermon at the Alumni Memorial Service in 1996; in Berlin, Germany at the signing of the agreement creating the German foundation "Remembrance, Responsibility, and the Future."

that the needs of elderly American survivors, protected by this country's social safety net, were not as profound as those of 135,000 elderly Soviet survivors, who lack such basics as food, winter fuel, and emergency medical care.

As if that case were not consuming enough, Neuborne also was a principal counsel representing slave laborers owed money by German industry and then became one of two U.S. trustees of the German Foundation, which is now distributing the $5.2 billion in compensation. Both Holocaust cases involved many flights to and from Europe, and Neuborne admitted in a conversation last February that he was tired and "very rundown."

How does he conduct two or three careers at once—lawyer, teacher, writer? Neuborne self-effacingly credits the help of his Brennan Center research assistants and the computer access arranged for him by NYU through which he can connect to relevant databases anywhere in the world. But he also admits that he permits his work to occupy much of what, to another human being, would be free time.

"I work all the time," he said. "I cannot remember a weekend I haven't worked a very substantial part of the weekend. When I'm working on a case that I care deeply about it's the closest thing to me to being creative. I would have given anything in my life to be a writer or a painter, but the talent that was given to me was to be an imaginative lawyer—and I put that imagination at the service of issues I care deeply about."

Even when supposedly relaxing at their summer house in the Hamptons, he and Helen Redleaf Neuborne, his wife of 42 years who is now a senior program officer at the Ford Foundation specializing in poverty work, have what they call "study dates." They will sit in the same room with a fire going and take out their laptops. "And we'll be very happy," he said. "We spend four or five hours together, close the computer, go out to dinner and feel terrific."

He has been able to continue working this hard despite open-heart surgery in 2002 and a tragedy that has cast a shadow over his autumnal years. Lauren, one of his two daughters and a rabbinical student at Hebrew Union College, died suddenly in 1996 at the age of 27. She had a heart condition that required a pacemaker and a misfiring brought on a massive heart shock. For months afterward Neuborne walked the streets of Greenwich Village, crying. Friends told him to take the Holocaust cases to find something to animate him again, and it was more than a coincidence that those cases connected him to his daughter's interest in Judaism. "The reason friends urged me to take this was I was in despair, I was just in despair," he said.

Neuborne's older daughter, Ellen, her husband, David Landis, and two children, Henry, 9, and Leslie, 5, moved from Washington to New York to be near him. "That has been a salvation," he said.

The first of four children, Neuborne was born in the Riverdale section of the Bronx on New Year's Day, 1941, an event he likes to view with a dose of wit. "Even then I was a bad tax planner," he said. "I deprived my father of his tax exemption for 1940." His family soon moved to Greenpoint, Brooklyn, and moved again when he was four years old to Queens.

Young Neuborne was close to his maternal grandfather, Louis Danovitch, an immigrant from Odessa, Ukraine, who taught him how to read the stock tables and gave him a taste for intellectual seriousness. He also gave Neuborne's father, Sam, a tailor, a job managing his sportclothes factory loft.

Sam, who died five years ago, was clearly the strongest influence in Neuborne's life. He was the kind of principled individual who after the atomic bombing of Hiroshima and Nagasaki returned his war medals to the Pentagon. But he was also a more interesting puzzle, a political leftist who at the same time was a crack swimmer and Navy frogman—an underwater demolition specialist—during World War II. In fact, he had a front-row seat at the D-Day invasion, having been sent into Omaha Beach hours before the actual invasion to blow up the spikes Germans had planted underwater to tear the bottoms out of Allied landing craft. Later, he visited a liberated concentration camp and returned from Europe telling Burt that he would "never set foot on the continent of Europe again."

"We can't go to a baseball game because they won't let black people play," Neuborne's father told him. "We don't support that." But Burt remembers fondly that his dad did take him to see a Negro League game between the Homestead Grays and the Cuban X-Giants.

During the war, Neuborne's mother, Sylvia, promised that when his father returned he would take Burt to a Major League baseball game. But when the chance came his father declined. "We can't go to a baseball game because they won't let black people play," he told his son. "We don't support that." But Burt remembers fondly that his father did take him to see a Negro League game between the Homestead Grays and the Cuban X-Giants.

Though his dad believed religion did more harm than good, Burt remembers being bar-mitzvahed in a storefront Conservative synagogue as "an affirmation of the right of Jews to continue to exist." Whatever his political sympathies, he read a wide assortment of writers; some of Neuborne's most indelible memories are of reading Dos Passos, Steinbeck, Hemingway, and Dreiser with his father. Today, Neuborne's taste in books ranges widely, from Gabriel Garcia Marquez to Seamus Heaney to Anthony Trollope. "Till he died there was always a book the two of us were reading together," Neuborne said of his dad. "He also got huge pleasure out of my academic career—when I became a teacher it was a fulfillment of his wish."

His mother, Sylvia, spent her time caring for her home and giving her children a deep sense of affection. "If I had turned out to be a terrorist, my mother would sit on this couch and tell you that terrorism was the right thing to do," Neuborne said. The feminist era did not deter her from her traditional convictions. Neuborne, whose wife, Helen, was the long-time executive director of the NOW (National Organization for Women) Legal Defense Fund, tells of once growing annoyed at seeing his mother fetching his father's food and cutting it up at a wedding.

"I finally said to him, 'You don't have legs? You can't get up and get your own food?' " Neuborne recalled. " 'Helen is going to kill you.' "

His mother shot back: "Shut up. I don't need anybody to tell me I can't get my husband's food." She died at 86 in 2001, and Neuborne thinks that the fact his father died two years before was not irrelevant. "There's a price to having a great marriage," he said. "You're so fused with the other person you can't exist without them."

In his teens, despite the budding concern about the abuse of black civil rights and the excesses of the McCarthy era, Neuborne was not politically active. On Sundays, though, he would take an F-train to Washington Square Park to hear Allen Ginsberg and other Beat poets read at the fountain.